

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Dwayne Harris,

Plaintiff,

v.

Case No. 2:13-cv-304

Carl Nink, et al.,

Defendants.

ORDER

This is a civil rights action brought by plaintiff Dwayne Harris, a state inmate. Plaintiff seeks to initiate this action without prepayment of fees or costs. In a report and recommendation filed on August 9, 2013, the magistrate judge recommended that plaintiff's motion for leave to proceed *in forma pauperis* be denied.

Plaintiff filed timely objections to the report and recommendation on August 21, 2013. If a party objects within the allotted time to a report and recommendation, the court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1); see also Fed R. Civ. P. 72(b). Upon review, the court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).

Plaintiff concedes that on a least three occasions, actions brought by him in this court have been dismissed for failure to state a claim upon which relief can be granted. Under the Prison Litigation Reform Act, 28 U.S.C. §1915(g), plaintiff is precluded from bringing a civil action *in forma pauperis* unless he is "under

imminent danger of serious physical injury." 28 U.S.C. §1915(g).

Plaintiff's claims concern alleged inadequate medical care, inadequate prison staffing, having three inmates in one cell, inadequate access to the law library, problems with the delivery of legal mail, racial discrimination, retaliation, the presence of a drain in the inmate dining room, requiring inmates to wait in line outside the dining room in adverse weather conditions, and inadequate access to recreation facilities. However, the complaint is devoid of facts indicating that plaintiff is under imminent danger of serious physical injury due to any of these alleged claims. As to the claim of inadequate prison staffing, plaintiff was informed that the staffing levels had been approved by the Ohio Department of Rehabilitation of Corrections. See Complaint, ¶ 68. Although he alleges that other inmates have been involved in gang disputes due to the practice of placing three inmates in a cell, he states that he himself has not been assaulted. Complaint, ¶ 82. He has alleged no facts showing how he is in imminent danger of serious physical harm due to reduced law library hours, problems with legal mail delivery, the presence of a drain in the dining facility, the need to line up outside the dining room, or the lack of recreation hours.

Plaintiff argues that he is under imminent danger of serious physical injury due to his chronic problem with bleeding hemorrhoids because the doctors at the institution will not authorize the elective surgery to treat this condition. However, this court agrees with the observation of the magistrate judge, see Doc. 6, p. 5, that plaintiff's allegation that he has been dealing with this problem for eight years, see Complaint, ¶ 40, belies his

assertion that any potential physical injury is "imminent" and "serious" within the meaning of §1915(g).

The court has reviewed the report and recommendation and plaintiff's objections in accordance with 28 U.S.C. § 636(b)(1) and Rule 72(b) and concludes that plaintiff's objections lack merit. The court agrees with the finding of the magistrate judge that plaintiff has not alleged facts sufficient to demonstrate that he is under imminent danger of serious physical injury. The court hereby adopts the report and recommendation (Doc. 6). Plaintiff's application for leave to proceed *in forma pauperis* (Doc. 1) is denied. If plaintiff intends to pursue this action, he shall pay the full \$350.00 filing fee within thirty (30) days of the date of this order.

Date: September 5, 2013

S/James L. Graham
James L. Graham
United States District Judge